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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/526,942

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EXAMINER

CHRISTIANSEN, JANIE MEREDITH

ART UNIT

PAPER NUMBER

3751

NOTIFICATION DATE

DELIVERY MODE

02/22/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pto-sl@huschblackwell.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/526,942	<b>Applicant(s)</b> BAKER ET AL.	
	<b>Examiner</b> JANIE CHRISTIANSEN	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 9/16/2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-36 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/8/07 and 8/3/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

**Claim 19 is objected** to because of the following informalities: “indictor” should be rewritten as –indicator–. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claim 15 is rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 15 contains the trademark/trade name VELCRO. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe hook and loop fasteners and, accordingly, the identification/description is indefinite.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1, 3-5, 7-9, 14, 17-18, 20, 24-26, 28, and 34-36 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Patent 3,114,916 (hereinafter Hadley) in view of US Patent 6,904,621 (hereinafter Otto).

5. Regarding claims 1, 4, 7, 9, 17, 20, and 26 Hadley shows a urinal with a first liquid storage reservoir with a handle (5) (fig. 3) and an inlet opening (3) (fig. 4). There is a pickup device (7) (fig. 2) and a 'quick disconnect fitting' (8) associated with the outlet portion of the pickup device (fig. 4). Figure 4 shows a collection container (1) with a closable opening and removable lid (15) (fig. 4), having a second liquid storage reservoir. Note a first conduit (2) connecting the first storage reservoir in flow communication with the second liquid storage reservoir, with the conduit having one end portion connected to the 'quick disconnect fitting' (8). There is a pump (9) and electric motor (10) operable to drive the pump, and the pump has an inlet (12) and outlet (13) (note fig. 4). The pump device includes a housing having a first end cap, a second end cap, and an exhaust (13) (note fig. 4). There is a second conduit (14) connecting the second liquid storage reservoir to the pump inlet. The pump is a vacuum pump designed to apply a reduced pressure to the first and second conduits, the pickup device, and the second reservoir to induce flow of fluid from the first reservoir into the second reservoir (note col. 2, lines 34 – 37) (fig. 4). A control device (10) is associated with the pump device and operable by a user of the urinal for selectively activating and deactivating the drive device (note col. 3, lines 53 - 55) (fig. 4).

6. Hadley fails to show the pickup device with an inlet portion and outlet portion mounted to the urinal having the outlet portion positioned normally above the inlet portion, the inlet portion being positioned in the first liquid storage reservoir, the pickup device forming a fluid flow path between the first liquid storage reservoir and the outlet portion. Otto teaches that it is desirable to include a pickup device within the first storage reservoir of a urinary transfer device in order to draw urine from the reservoir, with the outlet portion of the pickup device located normally above the inlet portion (col. 4, lines 24 – 25) (fig. 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pickup device of Hadley to include

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an inlet portion located within the reservoir and an outlet portion positioned normally above the inlet portion in order to ensure complete removal of urine from the reservoir. Depending on the position of the first storage reservoir, some urine may not be pumped out unless a pickup device as taught by Otto was used.

7. Regarding claims 3 and 28, the combination of Hadley and Otto as set forth in pp. 5-6 above shows all in the instant invention, but Hadley fails to show a timer operable after a predetermined time to deactivate the drive device. Otto teaches that a timer in the form of a delay relay may be used in urinary transfer systems so that the pump may continue to run once deactivated by a user for a predetermined time period to ensure that any remaining urine in the reservoir be pumped from the first storage reservoir (col. 7, lines 23 - 28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Hadley to include a timer for deactivating the pump in order to pump all the urine out of the first storage reservoir.

8. Regarding claim 5, Hadley shows the collection container (1) includes an inlet (the portion connected to the first conduit) and an outlet (the portion connected to the second conduit) with a portion of the container inlet directed downward to prevent liquid entering the second reservoir from entering the container outlet (fig. 4).

9. Regarding claim 8, the shape of the lid (15) serves as a handle for moving the container since it provides an edge and recess beneath the lid for gripping.

10. Regarding claim 14, the handle (14) of Hadley serves as a retainer for selectively fixing the urinal in position relative to the user because it is used to position and maintain the reservoir in a specific position (col. 2, lines 7 - 11).

11. Regarding claim 18, Hadley shows the housing is cylindrical and is supported by a continuous arcuate foot (fig. 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use either a plurality of arcuate feet or one continuous arcuate foot because this is a design preference and would not alter the function of the device. Depending on the size, weight, and other variable features of the pump, it may be desirable to have a plurality of feet to support the pump. Other instances would require a continuous support due to the same variable features.

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12. Regarding claims 24 – 25, the apparatus resulting from the combination of Hadley and Otto as set forth above in pp. 5-7 would perform the method as claimed under normal use of the apparatus.

13. Regarding claims 34 and 36, the combination as set forth above in pp. 5-6 of Hadley in view of Otto shows all in the instant invention, but Hadley fails to show means for automatically deactivating the drive device after a predetermined period of time has lapsed after activation. Otto teaches that a timer in the form of a delay relay may be used in urinary transfer systems so that the pump may continue to run once deactivated, which is considered a period of time after activation, by a user for a predetermined time period to ensure that any remaining urine in the reservoir be pumped from the first storage reservoir (col. 7, lines 23 - 28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Hadley to include a timer for deactivating the pump in order to pump all the urine out of the first storage reservoir.

14. **Claims 2, 27, 32 – 33, and 35 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Hadley and Otto as applied to claims 1, 27, and 34 respectively above, and further in view of US Patent 3,337,992 (hereinafter Tolson).

15. Regarding claims 2, 27, and 35, the combination of Hadley and Otto show all in the instant invention as set forth above in pp. 5-6, but Hadley fails to show the control device includes a wireless transmitter and a receiver, the receiver being operably connected to the drive device. The control device of Hadley is a hard-wired switch connected to the drive device. Tolson teaches that it is known in the art that any suitable energy path is acceptable for controlling devices, including wire paths and radio signals, as long as a suitable transmitter and receiver are used. Therefore, absent any unforeseen benefit, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the control device of Hadley to use a wireless transmitter and receiver. Having a wireless control device would improve the apparatus of Hadley by allowing the user to activate the pump in the instance where the pump is remotely located in relation to the user such as when the user is bedridden.

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16. Regarding claims 32 - 33, the apparatus resulting from the combination of Hadley and Otto and further in view of Tolson as set forth above in pp. 15 would perform the method as claimed under normal use of the apparatus.

17. **Claims 6, 10, and 11 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Hadley and Otto as applied to claim 1 above, and further in view of US Patent 5,551,097 (hereinafter Short).

18. Regarding claim 6, the combination of Hadley and Otto show all in the instant invention as set forth above in pp. 5-6, but Hadley fails to show the collection container includes a sensor that provides input as to when the collection container requires emptying. Short teaches that a float switch may be used to measure the level of waste in a waste tank for a portable urinal and to send a signal when the volume within the tank reaches a certain level (col. 3, lines 32 - 34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the collection container of Hadley to include a sensor that provides input as to when the collection contains requires emptying as taught by Short. This would be particularly beneficial in the instance where the container is made of an opaque material so that the user may know when to empty the tank since it would not be visible from the outside.

19. Regarding claims 10 - 11, the combination of Hadley and Otto show all in the instant invention as set forth above in pp. 5-6, but Hadley fails to show the urinal has a closable lid with a plurality of vent holes. Short teaches using a vented cap for sealing a urinary receptacle (col. 3, lines 47 - 52, fig. 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a vented cap on the urinal of Hadley to provide a sanitary cover for the device when not in use to prevent leakage of any urine that may be left in the device after use. Furthermore, including a plurality of openings would have been obvious to one having ordinary skill in the art to ensure proper ventilation of the apparatus of Hadley and is considered a design choice because as long as one hole exists, the apparatus will achieve some level of ventilation to perform the desired function.

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20. **Claim 12 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Hadley and Otto as applied to claim 1 above, and further in view of US Patent 6,257,446 (hereinafter Pike).

21. Regarding claim 12, the combination of Hadley and Otto show all in the instant invention as set forth above in pp. 5-7, with the quick disconnect fitting connected in liquid relationship to a siphon tube positioned adjacent to a bottom portion of the first reservoir but fails to show the first reservoir includes an indented well portion. Pike teaches that when using siphon tubes for removing liquids via a pumping force, it is desirable to include an indented, well portion beneath the siphon tube in order to remove any remaining liquid at the bottom of a container (abstract, fig. 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an indented well portion in the modified urinal of Hadley to ensure all urine is removed from the first reservoir as evidenced by the teachings of Pike.

22. **Claim 15 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Hadley and Otto as applied to claim 14 above, and further in view of US Patent 6,565,546 (hereinafter Hurst).

23. Regarding claim 15, the combination of Hadley and Otto show all in the instant invention as set forth above in pp. 5-7, but Hadley fails to show the retainer includes a weight and a strip of VELCRO. Hurst teaches that when using a urinary transfer device, it is desirable to include a hook and loop fastener to attach a urine reservoir to the body of the user (col. 3, lines 59 – 61, fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention made to modify the apparatus of Hadley to include a hook and loop fastener strip to secure the first reservoir to the leg of a user to ensure a proper position while in use. It should be noted that the hook and loop fastener strips are considered to have a 'weight' in the sense that adding the strips to the apparatus would provide additional weight to the apparatus.

24. **Claim 16 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Hadley and Otto as applied to claim 14 above, and further in view of US Patent 5,926,858 (hereinafter Heller).



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25. Regarding claim 16, the combination of Hadley and Otto as set forth above in pp. 5- 7 shows all in the instant invention, but Hadley fails to show the retainer includes a hold down including a generally U-shaped member forming a channel for receiving the urinal and a hold down member connected to the U-shaped member and projecting outwardly and adapted to be placed under a user's leg. Heller teaches using a retainer with a U-shape for receiving a portable urinal with winged projections to be placed under a user's legs to stabilize the reservoir during use (abstract, figs. 1 and 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Hadley to include a retainer such as that taught by Heller in order to more accurately secure the device when being used. Providing hold backs for a user's legs will ensure that the apparatus of Hadley lies in the appropriate position for receiving urine, and would therefore be an improvement on the device of Hadley. Furthermore, not having to rely on the handle for maintaining the position of the device would free up one of the user's hands.

26. **Claim 19 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Hadley and Otto as applied to claim 17 above, and further in view of US Patent 4,631,061 (hereinafter Martin).

27. Regarding claim 19, the combination of Hadley and Otto as set forth above in pp. 5- 7 shows all in the instant invention, but Hadley fails to show the pump device includes a light indicator and a power overload protector. In discussing a related prior art, Martin teaches that it is desirable to include a light indicator to notify the user when the storage reservoir of a urinary transfer devices needs to be emptied (col. 43 – 48). Martin also teaches using a ground fault as a fuse to break the circuit if too much current enters the pump device (col. 4, lines 24 - 26). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an indicator and power overload protector for the reasons set forth above in the teachings of Martin.

28. **Claims 21 – 22, and 29 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Hadley and Otto as applied to claims 1 and 26 respectively above, and further in view of US Patent 4,656,675 (hereinafter Fajnsztajn).

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29. Regarding claims 21 and 29, the combination of Hadley and Otto as set forth above in pp. 5-6 shows all in the instant invention, but Hadley fails to show an external male catheter having an outlet tube, wherein the outlet tube of the external male catheter is in flow communication with the urinal. Fajnsztajn teaches that an external male catheter provides a safe, sanitary device for receiving urine from a male that prevents spillage of urine (abstract, fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Hadley to include the male catheter of Fajnsztajn in order to provide sanitary, secure means for receiving urine specifically from a male user to help prevent any spillage of urine.

30. Regarding claim 22, it would be obvious to one having ordinary skill in the art to include an attachment device for attaching the catheter to the apparatus of Hadley in order to prevent urine from leaking or escaping the catheter during use since in the instant case, the outlet tube of Fajnsztajn would be received by the urinal of Hadley.

31. **Claim 23 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Hadley in view of Fajnsztajn and Tolson.

32. Regarding claim 23, Hadley shows a receptacle (3) with an outlet tube (2). Fig. 4 shows a collection container having a liquid storage reservoir (1) with the outlet tube of the receptacle connecting the liquid storage reservoir of the collection container in flow communication with the outlet tube (fig. 4). There is a pump (9) and a drive device (10) operable to drive the pump, and the pump has an inlet and outlet (note fig. 4). There is a conduit (14) connecting the liquid storage reservoir of the collection container to the pump inlet. The pump is a vacuum pump designed to apply a reduced pressure to the outlet tube of the receptacle, the conduit, and the liquid storage reservoir of the collection container to induce flow of fluid from the receptacle into the liquid storage reservoir of the collection container (note col. 2, lines 34 – 37) (fig. 4). A control device (11) is associated with the pump device and operable by a user of the receptacle for selectively activating and deactivating the drive device (note col. 3, lines 53 – 55) (fig. 4).

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33. Hadley fails to show an external male catheter with an outlet tube. Fajnsztajn teaches that an external male catheter provides a safe, sanitary device for receiving urine from a male that prevents spillage of urine (abstract, fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Hadley to include the male catheter of Fajnsztajn in order to provide sanitary, secure means for receiving urine specifically from a male user to help prevent any spillage of urine.

34. Hadley fails to show the control device operable remotely. The control device of Hadley is a hard-wired switch connected to the drive device. Tolson teaches that it is known in the art that any suitable energy path is acceptable for controlling devices, including wire paths and radio signals, as long as a suitable transmitter and receiver are used. Therefore, absent any unforeseen benefit, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the control device of Hadley to use a wireless transmitter and receiver. Having a wireless control device would improve the apparatus of Hadley by allowing the user to activate the pump in the instance where the pump is remotely located in relation to the user such as when the user is bedridden.

2. **Claims 30 - 31 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Hadley in view of Fajnsztajn, Tolson, and Otto.

35. Regarding claims 30 and 31, the combination of Hadley in view of Tolson and Fajnsztajn as set forth above in pp. 32 – 34 show all in the instant invention, but, Hadley fails to show means for automatically deactivating the drive device after a predetermined period of time has lapsed after activation, where the means include a timer circuit associated with the control device. Otto teaches that a timer in the form of a delay relay may be used in urinary transfer systems so that the pump may continue to run once deactivated, which is considered a period of time after activation, by a user for a predetermined time period to ensure that any remaining urine in the reservoir be pumped from the first storage reservoir (col. 7, lines 23 - 28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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modify the apparatus of Hadley to include a timer for deactivating the pump in order to pump all the urine out of the first storage reservoir.

### **Conclusion**

36. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 4,360,933 issued to Kimura et al. shows a urinary transfer device that uses a suction pump operated by the user to store urine in a remote storage tank. US Patent 5,701,612 issued to Daneshvar shows a portable urinary transfer device that uses a suction pump to draw urine into a storage reservoir, the storage container having a handle. The apparatus of Daneshvar further includes a glowing indicator bulb on the switch of the pump device. US Patent 3,973,479 issued to Whiteley shows a suction pump with a cylindrical housing that rests on a plurality of arcuate feet. US Patent 105,979 issued to Price shows a urinal with a cap for covering the device when not in use.

37. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JANIE CHRISTIANSEN whose telephone number is (571)270-5208. The examiner can normally be reached on M-F 8:00 AM - 5:30 PM.

38. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

39. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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February 12, 2010

/Gregory L. Huson/  
Supervisory Patent Examiner, Art Unit 3751